EXHIBIT NO. 219.

City of Sammamish Environmental Critical Area Review 2012

CUMULATIVE IMPACT OF ECA UPDATE ITEM 3-19

[EXEMPTION OF LOW FUNCTION SMALL ISOLATED WETLANDS < 4000 SF]

October 4, 2012

David and Megan Gee
22201 NE 28th Place
Sammamish, WA 98074

Existing Regulation(s)	Proposed Amendment & Description

Desired Result of Amendment:

Supported by Best Available Science (yes / no)?

Evaluation of Proposed Amendment: -, 0, +

Environmental Effect		Implementation Effect	
Property Effect		**Overall Effect**	

What is the Cumulative Environmental Impact of Item 3-19?

From: Mahbubul Islam [mailto:Islam.Mahbubul@epamail.epa.gov]
Sent: Tuesday, September 18, 2012 12:22 PM
To: Evan Maxim; Kamuron Gurol
Cc: Kathy Richardson; Michael Luxenberg
Subject: Potential Conflicts with State and Federal Laws

Items such as 2-10,2-11, 2-12, 3-17,3-18, 3-19, 3-21,4-15 (not an inclusive or definite list), if adopted as proposed will increase cumulative effects and thereby will add degradation to the existing water quality. In Sammamish, most of our

What is the Cumulative Environmental Impact of 3-19?

Total (est.) cumulative impact of Item 3-19:

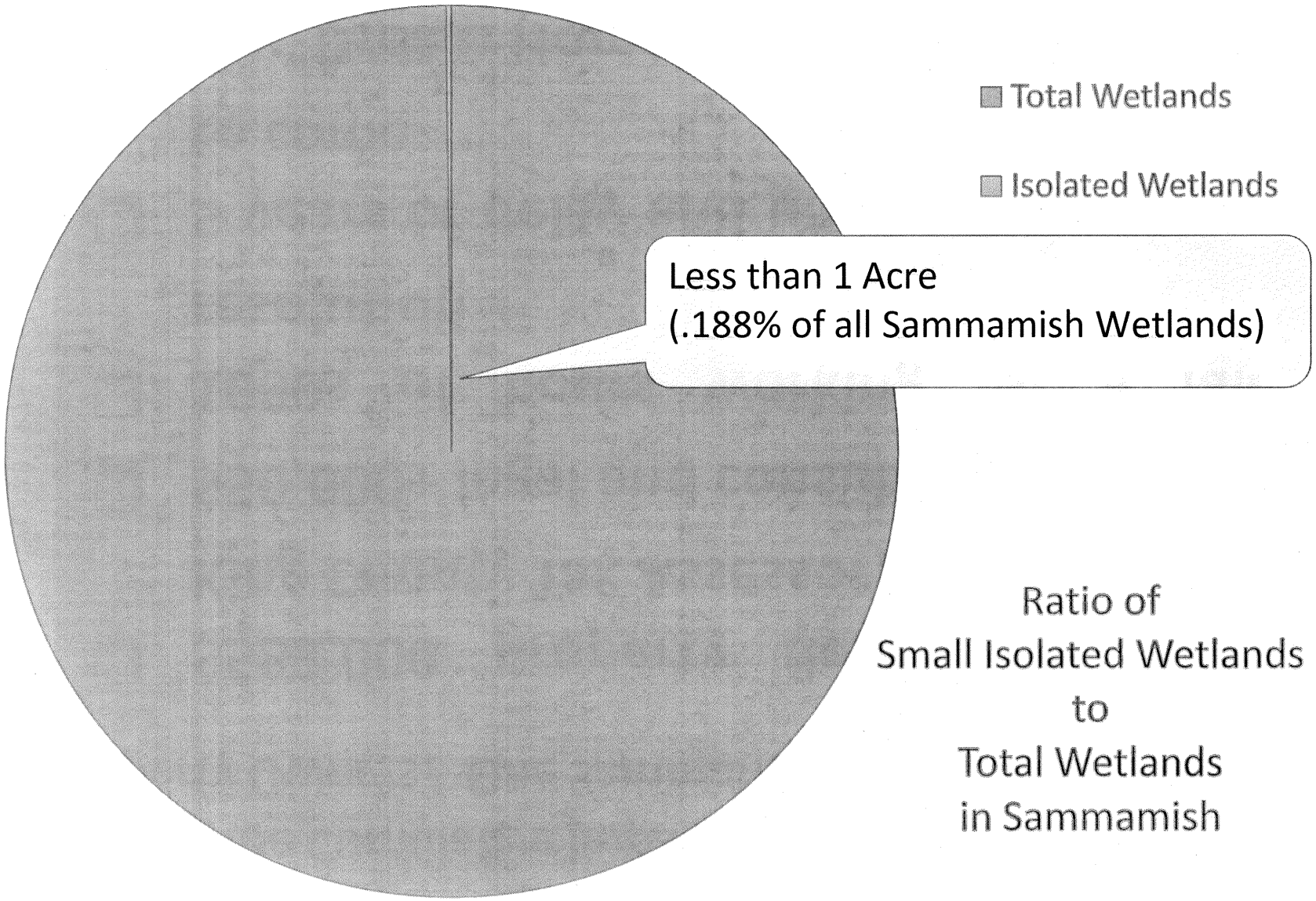
- **Less than 1 acre of small isolated wetlands**
- **Less than 1/530 or .188% of all Sammamish wetlands**

[Note: Estimate likely overstates impact because 3-19 is limited to small isolated wetlands of low function]

Available Data:

- **530 total acres of wetlands** in Sammamish (per Sammamish Comprehensive Plan)
- **5 small isolated wetlands** in Sammamish (per City staff)—at least 3 already mitigated
- Let's **assume there are 10** small isolated wetlands in Sammamish
- Let's assume, for ease of math, that each small isolated wetland subject to 3-19 is exactly **4000 square feet**
- 200%+ of City staff estimates equals approximately **40,000 square feet of isolated wetlands** [1 Acre = 43560 sq. feet]

What is the Cumulative Environmental Impact of 3-19?

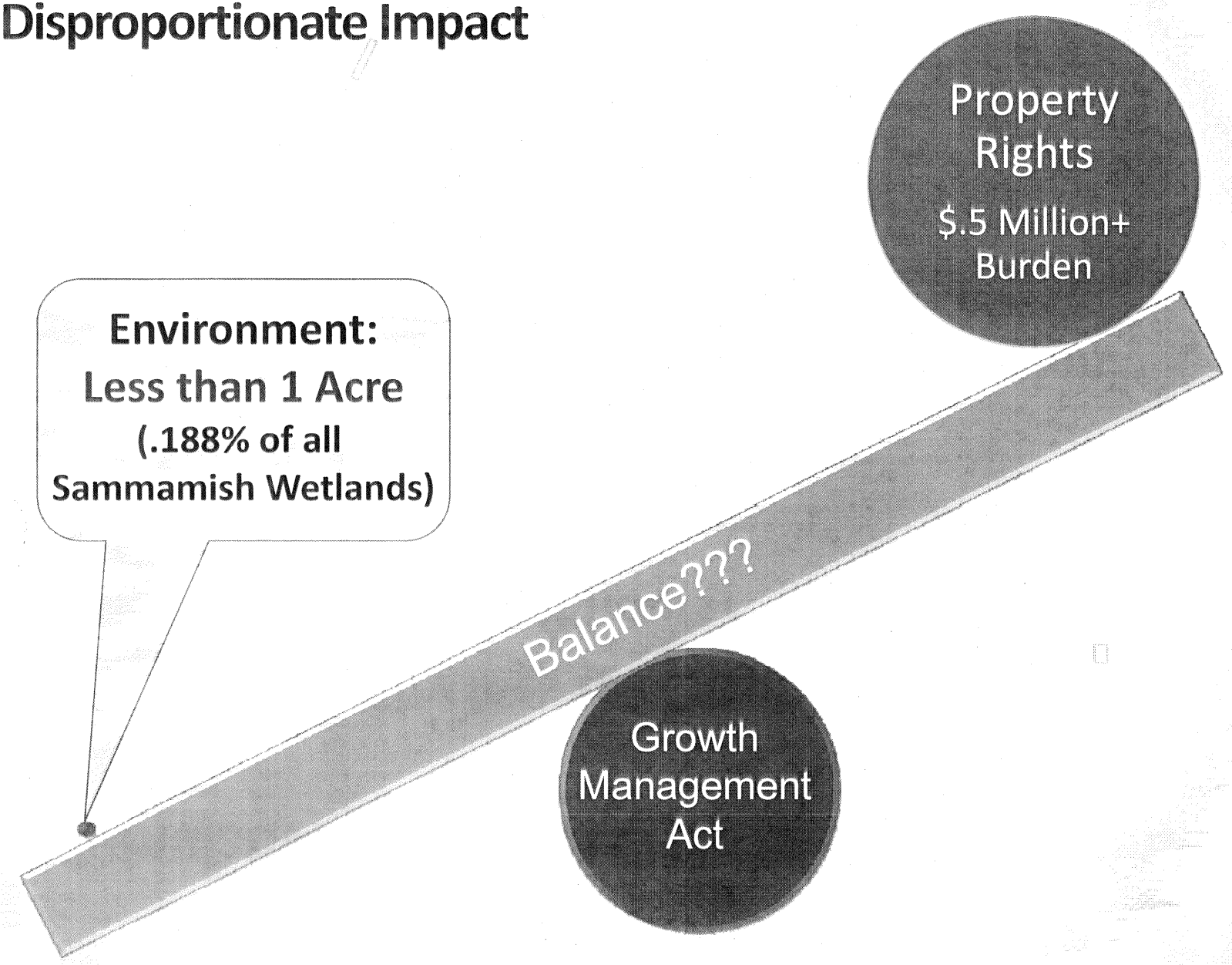


Ratio of
Small Isolated Wetlands
to
Total Wetlands
in Sammamish

What is the Cumulative Impact of Current Code on Property Owners? One Sammamish Family's Experience

- $583,000 property devaluation (per King County Tax Assessor)
- $50,000+ legal and consulting fees
- 1000s of hours working for a fair resolution
- 5 years of delay and uncertainty…more to come
- No "Dream Home" on Beaver Lake

Growth Management Act Planning Goals (RCW 36.70A.020)
Disproportionate Impact



Cumulative Impact on Code Implementation?

- ❑ $_____? City fees to consultants
- ❑ 1000s of City staff hours?
- ❑ 5 years of process
- ❑ Two AMEC reports
- ❑ 2 "Major" Items to Planning Commission
- ❑ At least 4 separate City staff consultations with DOE on this single issue
- ❑ Delays to ECA review process

Simple Solution Made Unduly Complicated?

"The Planning Commission leadership has decided to hold off on discussing this item until the Department of Ecology has a chance to send us an expected comment letter – which should be here by October 18."

DOE version 1.0 – April 18, 2012

CAO Review Coordinator, Donna Bunten **[EXH 67-70]**

Page 10 discusses exempting small wetlands. The City's existing code is currently consistent with our recommended language on exempting small wetlands. **We have included Ecology's language below** if you wish to consider using it. Alternatively, an abbreviated version can be found in the *Guidance for Small Cities* on page A-3 and -4.

1. Exempt wetlands less than 1,000 sf where it has been shown by applicant that they are not associated with a riparian corridor, they are not part of a wetland mosaic and do not contain habitat identified as essential for local populations of priority species identified by Washington Department of Fish and Wildlife.

2. **Evaluate the circumstances of wetlands between 1,000 sf and 4,000 sf in size**. Ecology recommends the use of the 2004 Wetland Rating System to establish category and evaluate functions. Use the following criteria and local knowledge of natural resources to make an informed decision about whether to exempt wetlands between 1,000 sf and 4,000 sf from the requirement to avoid impacts.

a. The requirement to avoid impacts may be dropped for Category III and IV wetlands between 1,000 and 4,000 sf that meet all of the following criteria:

Wetland is not associated with a riparian corridor and

Wetland is not part of a wetland mosaic and

Wetland does not score 20 points or greater for habitat in the 2004 Western Washington Rating System and

Wetland does not contain habitat identified as essential for local populations of priority species identified by Washington Department of Fish and Wildlife

b. Impacts allowed under this provision to these wetlands will be fully mitigated as required in mitigation section.

c. All Category I and II Wetlands between 1,000 sf and 4,000 sf should be evaluated with full mitigation sequencing and buffer establishment. Any approved impacts should be adequately compensated by mitigation.

3. Wetlands larger than 4,000 sf will be evaluated using standard procedures for wetland review identified in Section XXX.

DOE version 2.0 – May 1, 2012

Patrick McGraner, WSDOE/NWRO Shorelands + Environ. Assistance Program **[EXH 105]**

"[P]lease note that the suggested draft language from the Guidance for Small Cities cites only isolated Category III and Category IV wetlands less than 1,000 sf that meet specific criteria—not wetlands less than 4,000 sf as found in the original draft language provided above."

"In summary, there is no support for exempting small wetlands in the scientific literature. If exemptions are proposed as a matter of flexibility, then it should be clearly stated that the exemptions would only apply to isolated Category III and Category IV that meet the criteria provided in the two examples above."

AMEC review of DOE v. 1.0 + 2.0

(Supplemental Report, posted June 15, 2012)

"[R]ecognizing the need for some administrative flexibility, the Washington State Department of Ecology (2012) has provided guidance that could support exempting isolated wetlands up to 4,000 square feet from requirements to avoid impacts, with mitigation still required. By "isolated," the wetlands would not be associated with riparian areas or buffers for either streams or lakes and would not be part of a wetland mosaic, where they would function as a part of a larger collection of nearby wetlands. Ecology also recommends that exempt wetlands not provide habitat identified by the Washington Department of Fish and Wildlife as essential for local populations of priority species. For wetlands between 1,000 and 4,000 square feet, Ecology recommends that the exemption apply only to Category III and IV wetlands that do not score 20 points or greater for habitat under the Western Washington Rating System. Ecology also notes that, where water quality is a high priority (as is the case for all areas draining to Lake Sammamish), wetlands that provide a high level of water quality protection should generally also not be exempted from normal regulatory protections."

DOE version 3.0 – July 23, 2012 [EXH 181]

"Ecology's preference would be to use the language in the Small Cities Guidance document."

* * * * *

"However, we recognize that **many jurisdictions** desire to place size thresholds on wetlands that are to be regulated, **in order to focus staff time and attention on the most important natural resources**. In order to assist jurisdictions in addressing this administrative need, while minimizing the impact on wetland functions, Ecology developed the 0-4,000 sf exemption language."

"[M]any jurisdictions desire to place size thresholds on wetlands that are to be regulated, in order to focus staff time and attention on the most important natural resources."

- Maple Valley--Size (Isolated Wetlands < 5000 sf)
- Kent—Size + Function (Isolated Class III + IV < 5000 sf)
- Black Diamond—Size + Function (< 1000 sf; and Class III + IV between 1000 + 4000 sf)
- Des Moines--Size + Function (< 1000 sf; and Class III + IV between 1000 + 4000 sf)
- City of Sultan--Size + Function (< 1000 sf; Class III + IV between 1000 + 4000 sf)
- Bellevue--Size + Function (Class IV < 2500 sf)
- Skagit County--Size and Function (Class II + III < 2500 sf; Class IV < 10,000 sf)

(PLEASE SEE APPENDIX FOR PERTINENT CODE EXCERPTS)

Item 3-19 allows Sammamish to comply with GMA by adopting Best Available Policy

- Negligible cumulative environmental impact (< 1 acre = .188% of all Sammamish wetlands)
- Significant positive property effect -- Eliminates inordinate cumulative impact on individual property owners
- Significant positive implementation effect-- frees City staff to "focus ... time and attention on the most important natural resources" rather than spending inordinate time and taxpayer funds focused on <1 acre of low function isolated wetlands

Thank You

David and Megan Gee
22201 NE 28th Place
Sammamish, WA 98074

Appendix

How many small isolated wetlands are there in Sammamish?

From: "Susan Cezar" <scezar@ci.sammamish.wa.us>
Date: Thu, Jan 26, 2012 10:43 am
Subject: isolated wetlands
To: "meggee@comcast.net" meggee@comcast.net

Hi Megan, thank you for your inquiry regarding hydrologically isolated wetlands under 5,000 square feet. The City does not have an inventory of all wetlands, or of isolated wetlands under 5,000 square feet. As you know, we did do some mapping work in a few areas of the city as time/resources allowed. There are a number of other resources that the city and the public can use to gain some information, such as the King County wetland inventory, aerial photos, and the mapped areas completed by the city. However, there isn't really a substitute for a professional evaluation on a site-specific basis.

A few projects that the staff recall contained an isolated wetland less than 5,000 square feet are noted below:

1. Ivy 12 Plat, PLN2009-00004
2. Wrobel & Beaver Crest Plats, PLN2005-00082 and PLN2005-00083
3. Gramercy Park, PLN2005-00075 (not positive on this one)

I hope this information is helpful to you.
Susan

[APPENDIX]

From: Mahbubul Islam [mailto:Islam.Mahbubul@epamail.epa.gov]
Sent: Monday, July 23, 2012 11:27 AM
To: Kamuron Gurol; Evan Maxim
Cc: Michael Luxenberg; Kathy Richardson
Subject: Some data about ECAs in Sammamish

Hi Kamuron/Evan,

As the Planning Commission prepares to begin discussion and deliberation on the ECA regulations update, I would find it helpful to have some statistics and administrative information. I presume that our individual and collective recommendations will require input from areas beyond best available science, such as, administrative ease of implementation. I like to request you to provide the following information before we begin our deliberation. Also, please post my questions and your responses at the Public Comment section for everyone's benefit.

Thanks,

Mahbubul Islam

Data about ECA:

Based on previous Sammamish/King County basin or sub-basin studies, delineations and wetland site studies for development permits, and other public knowledge, what would you estimate be the total number of ECAs (mainly wetlands and streams) in the City jurisdiction?

What would be the average size of a wetland (acres or square feet) in our City?

What category/class of streams and wetlands (S, F, Np, Ns or Category I-IV) predominantly found in our city? An estimate of the percentage of each category would be helpful.

What would be an estimate of total number of isolated wetlands in the City limit?

Data about administration and implementation:

How many wetland study reports were reviewed by the City as part of a development application in the last ten years?

How many wetland studies on an average the City receives a year from the public?

Do we have any wetland biologist on our city staff to review wetland studies?

How long (the number of hours) does the City staff require on an average to review an applicant's wetland study report?

How many times in the past ten year the City had to disagree with an applicant's wetland study report conclusion?

How frequently (i.e., how many times in the past 10 years?) the City uses a third party peer review of an applicant's wetland study report?

How many Reasonable Use Exception (REU) the City has received in the past 10 years?

How many Reasonable Use Exception (REU) the City has disapproved in the past 10 years?

Has there ever been any ECA "takings" lawsuit brought against the city? If so, how many? What were the Court's findings?

[APPENDIX]

How many small isolated wetlands are there in Sammamish?

You may have heard...

- "Isolated wetland" definition can't be met by any wetland in Sammamish…
- In fact, staff review has confirmed isolated wetlands on several recent projects (Wrobel, Ivy 12 subdivision, others)

City Staff: Planning Commission Refresher 101 (March 1, 2012)

[APPENDIX]

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[APPENDIX]

How many acres of wetlands in Sammamish?

"There are approximately 530 acres of wetlands in the City of Sammamish."

Sammamish Comprehensive Plan (Page IV-8)

[APPENDIX]

022406-9024 Department of Assessments

11/09 King Co Tax Assessor's Determination Based upon Review of Environ Critical Area Study:

"Value reduced by 60%..."

[$530,000]

Parcel

Area: 069-005-0
Spec Area:
QSTR: SE-2-24-6
Folio: 23687B2
Type: R
Resp: R
Property Desc:
Property Address:
Legal Desc: N 100 FT OF S 830 FT OF GL 3

Account	Owner	Address
022406-9024-07	GEE DAVID+MEGAN	22201 NE 28TH [illegible] MMAMISH WA 98074

Notes

Note	By	Date
TRC by RHOF considering previous note for 2007, 2008, 2009 submitted to accounting.	MNAK	11/19/2009
Critical area study submitted by the taxpayer states, "A preliminary estimate of the useable area ... is about 12,000 sf. However, there is no sewage service available in this area and there appears to be insufficient room for a house and a septic drainfield." Value reduced by 60% according to land schedule and equalized with similarly impacted lots on Beaver Lake.	RHOF	10/21/2009
vacant land value select ok = baseland	JRAM	6/16/2009

[APPENDIX]

Maple Valley (2006)

18.60.300 Isolated wetlands – Limited exemption.

Isolated wetlands less than 5,000 square feet may be exempted from the provisions of MVMC 18.60.270 and 18.60.280 and may be altered by filling or dredging if the City determines that the cumulative impacts do not unduly counteract the purposes of this chapter and are mitigated pursuant to an approved mitigation plan. (Ord. O-06-333 § 1).

[APPENDIX]

Kent (2006)

11.06.610 Avoiding wetland impacts.

C. Filling of a hydrologically isolated emergent Category III or Category IV wetland less than five thousand (5,000) square feet in size shall be permitted, provided a replacement wetland area is created pursuant to KCC 11.06.660(D). For the purposes of this section, a hydrologically isolated wetland shall be determined by the U.S. Army Corps of Engineers.

[APPENDIX]

Black Diamond (2009)

19.10.235 - Provisions for small isolated wetlands.

B. Wetlands and associated buffers of less than one thousand square feet may be displaced when the wetland meets all of the following criteria, as documented in a wetland sensitive area study:

1. The wetland is not associated with a riparian corridor; and
2. The wetland is not part of a wetland mosaic; and
3. The wetland does not contain habitat identified as essential for local populations of priority species identified by Washington Department of Fish and Wildlife; and
4. Impacts of displaced wetlands shall be mitigated pursuant to Section 19.10.240

C. Category III and IV wetlands between one thousand and four thousand square feet may be displaced without meeting the provisions of Section 19.10.240 regarding avoidance, minimization, rectification, and reducing and eliminating the impact over time, provided that the criteria in subsection (B), above, are met and the wetland does not score twenty points or greater for habitat in the 2004 Western Washington Rating System.

(Ord. No. 875, § 4(Exh. B), 2-26-2009)

[APPENDIX]

Des Moines (2007)

18.86.120 Wetlands – Limited exemptions.

The city manager or designee may allow exemptions from the provisions of this chapter based on the following criteria:

(2) Wetlands between 1,000 and 4,000 square feet shall be evaluated using the Washington State Wetland Rating System for Western Washington (Hruby, 2004, or as revised) to establish category and evaluate functions. The following criteria and local knowledge of natural resources shall be used to determine whether to exempt wetlands between 1,000 and 4,000 square feet from the requirement to avoid impacts.

(a) The requirement to avoid impacts may be dropped for Category III and IV wetlands between 1,000 and 4,000 square feet that meet all of the following criteria:

- (i) Wetland is not associated with a riparian corridor; and
- (ii) Wetland is not part of a wetland mosaic; and
- (iii) Wetland does not score 20 points or more for habitat in the wetland rating system; and
- (iv) Wetland does not contain habitat identified as essential for local populations of priority species identified by [the] Washington Department of Fish and Wildlife.

(b) Impacts allowed under this provision to these wetlands will be fully mitigated as set forth in DMMC 18.86.130.

[APPENDIX]

City of Sultan (2007)

16.80.110 Regulation of small wetlands.
Small wetlands are those that are less than 4,000 square feet.

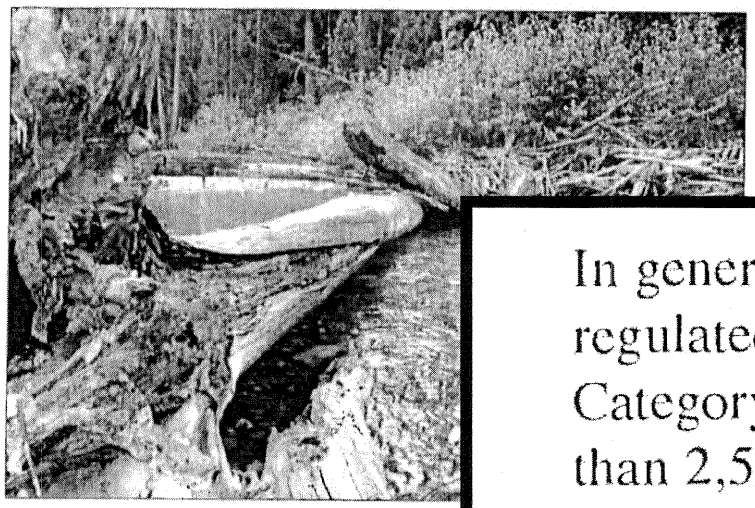
A. Wetlands less than 1,000 square feet are exempt where it has been shown by the applicant that the wetland is not associated with a riparian corridor, they are not part of a larger wetland system, and do not contain habitat identified as essential for local populations of priority species identified by the Washington Department of Fish and Wildlife.

B. Wetlands between 1,000 and 4,000 square feet are to be evaluated using the 2004 Western Washington Wetland Rating System and the below criteria when determining whether or not to exempt these smaller wetlands:
1. Category III and IV wetlands between 1,000 and 4,000 square feet may be exempt if the following requirements are met:
    a. The wetland is not associated with a riparian corridor; and
    b. The wetland is not part of a larger wetland system; and
    c. The wetland does not score 20 points or greater for habitat in the 2004 Western Washington Rating System; and
    d. The wetland does not contain habitat identified as essential for local populations of priority species identified by Washington Department of Fish and Wildlife and;
    e. Surface water impacts are mitigated pursuant to an approved mitigation plan or the Department of Ecology Storm Water Management Manual when necessary.

[APPENDIX]

From Sammamish ECA Website

Small Communities Critical Areas Ordinance Implementation Guidebook



STATE OF WASHINGTON
DEPARTMENT OF COMMUNITY,
TRADE AND ECONOMIC DEVELOPMENT

Wetlands

A Skagit County Critical Areas Ordinance Fact Sheet

kagit County Critical Areas Ordinance (CAO) tes development affecting wetlands; fish ildlife habitat conservation areas including s; aquifer recharge; and frequently flooded and ically hazardous areas.

AO fact sheet is one in a series, which bes the above-listed types of environmentally areas protected by Skagit County under Title 14, Chapter 14.24, Critical Areas Ordinance, effective June 13, 1996. This has been provided to you as general information and is not intended as a substitute for the actual codes or regulations. For more information, contact Skagit County Planning & Development Services at (360) 336-9410 or *pds@co.skagit.wa.us.*

t is a wetland?

ds are those areas inun-

ds perform a variety of ns that are important to the environmental and economic well-being of Skagit County. Wetlands:

wetland, you may contact Skagit County Planning & Development Services. They can provide you with inventoried wetlands maps.

Since not all county wetlands were identified in the wetland maps should neral guide for s. Your property n a wetland that ion under the l Areas Ordinance. ualified wetland d visit your prop- e the presence, d boundaries of You may contact or a list of quali- ecialists.

tion

elies on the te Department of nds Classifica- System to classify

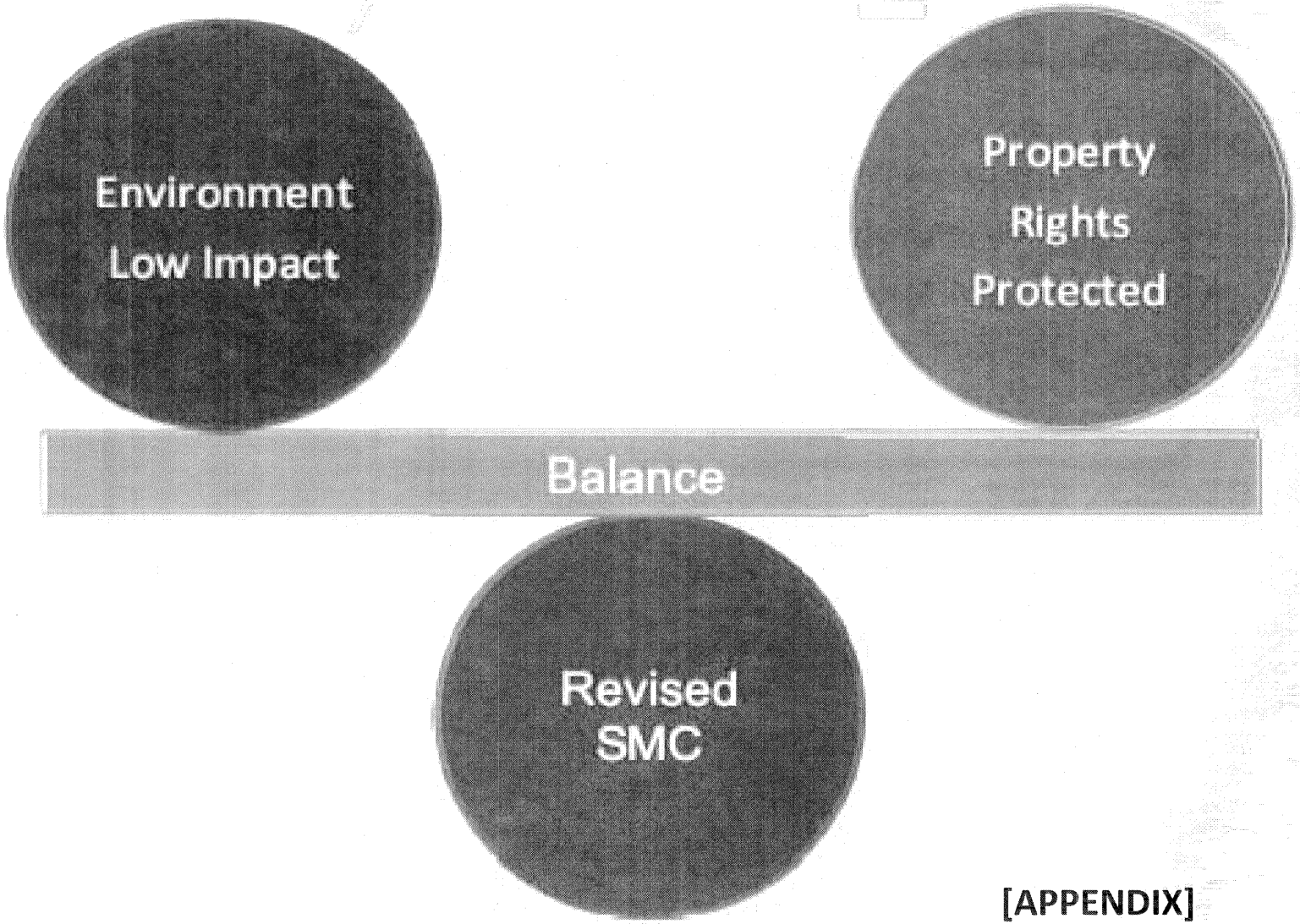
tlands are classified into four categories base upon their size, function, and value. Briefly, Category I wetlands receive the highest protection since

35

In general, all wetlands are regulated, with the exception of Category II and III wetlands less than 2,500 square feet in size and Category IV wetlands less than 10,000 square feet.

[APPENDIX]

Growth Management Act Planning Goals (RCW 36.70A.020)



[APPENDIX]

Debbie Beadle

From: David Gee <dgee@gsblaw.com>
Sent: Tuesday, October 02, 2012 6:13 PM
To: ECA
Cc: David Gee; meggee@comcast.net
Subject: David + Megan Gee Public Comment for October 4, 2012 Planning Commission Meeting
Attachments: 10-4-12 Planning Commision Public Comment re Cumulative Impact of Item 3-19 Low Function Small Isolated Wetlands.pdf